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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 960

KALMAN J. BERENYI, PETITIONER

v.

DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. A1–A7) is reported at 352 F. 2d 71. The opinion of the district court is reported at 239 F. Supp. 725.

JURISDICTION

The judgment of the court of appeals (Pet. A8) was entered on November 1, 1965. The petition for a writ of certiorari was filed on January 28, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence sustained the finding of the trial court that petitioner, an applicant for citizen-

ship, was not a person of good moral character, within the meaning of the Immigration and Nationality Act in that he had falsely denied that he had ever been a member of the Communist party in Hungary.

STATUTE INVOLVED

Section 316(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1427(a), provides as follows:

> No person, except as otherwise provided in this subchapter, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing his petition for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years and during the five years immediately preceding the date of filing his petition has been physically present therein for periods totaling at least half of that time, and who has resided within the State in which the petitioner filed the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

Section 101(f)(6) of the Immigration and Nationality Act, 8 U.S.C. 1101(f)(6), provides as follows:

> For the purposes of this chapter—
> No person shall be regarded as, or found to be, a person of good moral character who, dur-

ing the period for which good moral character is required to be established, is, or was—

* * * * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

Section 335(b) of the Immigration and Nationality Act, 8 U.S.C. 1446(b), provides in pertinent part:

The Attorney General shall designate employees of the Service to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make recommendations thereon to such court. * * * The record of the preliminary examination authorized by this subsection shall be admissible as evidence in any final hearing conducted by a naturalization court designated in section 1421 of this title.

STATEMENT

Petitioner, a Hungarian national, petitioned for naturalization. The petition was denied by the United States District Court for the District of Massachusetts on the ground that he had testified falsely for the purpose of facilitating his naturalization. The court of appeals affirmed.

1. The petitions for naturalization of petitioner and his wife were heard together. The government introduced the record of the preliminary examinations in both cases, pursuant to Section 335(b) of the Immigration and Nationality Act (R. 5, 8–13). In his application to file petition for naturalization, peti-

tioner denied that he had ever, in the United States or in any other place, "been a member of, or in any other way connected with, or associated with the Communist Party either directly, or indirectly through another organization, group, or person" (Gov't Ex. 1 D, R. 230). He reiterated that denial on two occasions while testifying before an officer of the Immigration and Naturalization Service. The government produced two witnesses to prove that those statements were false.

The first such witness was Dr. Pal Halasz, a physician and surgeon, residing in Peoria, Illinois, who had obtained his medical education in Budapest, Hungary, in the years 1949 to 1955 (R. 13–14). He had been a member of the Communist Party from 1948 to 1956. He attended party meetings about once a month from 1949 or 1950 until his graduation from medical school in 1955 (R. 18–20). At medical school, where petitioner was three years ahead of him, he saw petitioner at Communist Party meetings on more than one occasion during 1950 or 1951 (R. 20). Dr. Halasz testified that, at medical school, students whose membership in the party was desired, would be told to attend meetings and that it was known that failure to attend might entail such consequences as expulsion from school or loss of financial support (R. 24). At some of these meetings he had seen petitioner. He could not recall that he had heard petitioner speak at Communist Party meetings (R. 24–26, 28). Petitioner was an outstanding student, and there was particular pressure on the best students to join the Party (R. 26, 29). Dr. Halasz could not say whether petitioner had ever joined the party. He had never seen a mem-

bership card for the witness although he had occasionally served as doorkeeper at Party meetings (R. 27, 30). The witness could not recall whether petitioner attended closed as well as open meetings (R. 32). If petitioner ever spoke about the Communists in private conversations, it was not in favor of them (R. 33). The witness thought petitioner was a Party member because he had seen him at Party meetings, but the witness did not believe that petitioner was a Communist at heart (R. 34).

The second government witness was Dr. Gyorgy Kury who had received his medical education at the University of Budapest Medical School, where he was a classmate of petitioner whom he first met in 1946 (R. 37–38). The witness did not attend Communist Party meetings other than indoctrination meetings, and was not a member of the Communist Party (R. 39–40). Petitioner had been an instructor at an indoctrination meeting attended by the witness in September 1948. The witness was asked (R. 42):

> The COURT. What did he instruct in?
>
> The WITNESS. Marxism, Leninism. He said he was ideological person responsible for ideological education. He told us. Convince us to read Soviet books. We have to discuss newspaper, news among us and occasionally to see Soviet movies.
>
> The COURT. What if anything did he say about Communist ideology?
>
> The WITNESS. Well, I don't recall. This is what words, what he says: prefers that you do all these things and make up your mind, but he did not actually ask us to join to the Communist Party.

On cross-examination, Dr. Kury was asked further about the same meeting (R. 51–52):

> Q. Well, sir, give us the substance of this statement. How long did the statement take and what did he say? A. Well, it took about five or ten minutes. I don't really recall. Not more than five minutes usually when each member gave his life story.
>
> Q. What did he say? A. Well, he says that he joined the Communist Party in 19— after the Soviet troops occupied Hungary in 1945, and he is a man who is responsible for our ideological education, and said in general that all we can go to see Soviet film sometimes and how we can discuss newspapers and to read books, ideological books.

Petitioner was "most important person" at the meeting, but the witness did not recall the name of the student leader (R. 52). The witness did not recall any other statements by petitioner, as the witness had been transferred to another group (R. 53–54). As to his personal relations with petitioner, Dr. Kury said that he was not friendly and not an enemy (R. 44). Asked whether it were not a fact that he did not like petitioner, Dr. Kury replied that he "did not have any thing against him" (R. 54). Dr. Kury said that he attended no more study groups after 1949 having been forced out because he was hostile to the party (R. 55).

2. Petitioner, in his own behalf, testified that he had never been a member of the Communist Party of Hungary (R. 81–82), and had never made any statement such as that attributed to him by Dr. Kury. He did not join the Communist Party in 1945. At

the time the Soviet troops came in, in 1945, he was sixteen years old. He was then living with his parents and going to high school. He was very religious and was an altar boy with the order of St. Franciscan Nuns until 1947 (R. 82).

When petitioner entered the Budapest Medical School in September 1946, the school was not dominated by the Communist Party. There were Communist groups, but petitioner did not join any (R. 83). In 1948, when the Communists took over, they held meetings, about once a month, of groups of students in which they tried to indoctrinate the students.[1] He attended open meetings, but never attended any closed meetings. These meetings were supposed to be voluntary, but there could be serious consequences for non-attendance. Petitioner would speak occasionally if asked a question, and would give an answer such as was expected of him, but did not actively participate. He was never a Communist Party member, never had a Communist Party card, and never paid dues (R. 87–88). While a student, he joined the Hungarian army as a doctor in 1949 having been more or less ordered to do so. This provided him with free board, tuition and a little money for books, which he needed to complete his education. It was not necessary to be a Communist to enter the army. Upon graduation he received the rank of first lieutenant and, after three years, an automatic promotion to captain (R. 89–91). On June 7, 1952, he was married to Magda-

[1] In a statement under oath in connection with his application, petitioner said he had attended meetings of the whole school (R. 239).

lena Retsagi, a medical student who had also joined the army. The ceremony was both civil and religious, although religious ceremonies were then frowned upon (R. 91–92).

At the time of the 1956 uprising, petitioner was still in the army, but he and his wife were making plans to leave the country. In order to minimize the likelihood of being shot for desertion if he were caught, he persuaded his commanding officer to put down on his papers that he had asked to be released from the army. He and his wife then successfully eluded the Russians and got across the border into Austria (R. 93–95).[1] After a week in Austria, they were flown to the United States. In this country they were continuously employed in various hospitals, first as interns, then, after residency training, as licensed physicians. He had been a senior instructor in anesthesiology at Tufts University Medical School and was now engaged in private practice as an anesthesiologist. Petitioner testified that his acquaintance with Dr. Kury was only superficial. He did not recall Kury's name and recognized his face only when he saw him at the Immigration Service. He expressed his complete satisfaction with the United States and its form of government and would take an unqualified oath of allegiance (R. 99).

Other witnesses testified to petitioner's opposition to the Communist regime in Hungary. His wife,

[1] At the request of the trial judge, petitioner brought to court the paper which he procured from his commanding officer in Hungary for the purpose of explaining his absence from military duty (R. 94, 102; translation of document, R. 258).

testifying for him and in her own behalf, stated that she had never been a Communist herself. Her father had been the senior executive in a Budapest firm and came to the United States with his family in 1948. The witness was unable to accompany them because she was over the age of eighteen. She told in detail of petitioner's opposition to the Communist regime and described their flight across the border with an aunt and uncle in November 1956 (R. 102–120). Another Hungarian who escaped in 1956, a mechanical engineer, who had been imprisoned by the Communists and whose brother broadcast from Germany for Radio Free Europe, testified to a close relationship with the Berenyis and to petitioner's consistent opposition to the Communist regime when they were all in Hungary. He had known Mrs. Berenyi since 1947 and petitioner from about 1950 (R. 121–132). Testimony as to the opposition of both petitioner and his wife to Communism while they were living in Hungary was given by Mrs. Berenyi's aunt, who had escaped with her husband and the Berenyis across the border in 1956 (R. 136–139).

3. The trial court gave judgment denying the petition.[3] It found that petitioner became a member of the Communist Party in 1945, when the Russian troops occupied Hungary; that he attended closed meetings of the Communist Party; that he was in charge of communist ideology at student study group meetings for an undetermined period of time; that he did not participate in the uprising of 1956 but,

[3] The recommendation of the commissioner that Mrs. Berenyi's application be denied was disapproved (R. 266–267).

in the resulting confusion, fled with his wife and others into Austria and later entered the United States. The court found that petitioner falsely answered that he had not been a member of the Communist Party in his application to file petition for naturalization and on two occasions before an immigration examiner and that he had done so for the purpose of facilitating his naturalization. On this basis the court found that petitioner was not a person of good moral character as defined by the Immigration and Nationality Act.

ARGUMENT

Section 101(f)(6) of the Immigration and Nationality Act specifically provides that no person shall be found to be a person of good moral character if, during the period for which good moral character is required to be established, he "has given false testimony for the purpose of obtaining any benefits under this chapter." It was because the district court found that petitioner had falsely denied his membership in the Communist Party in Hungary in order to obtain the benefits of naturalization (and not because of membership as such) that petitioner was denied naturalization. The exact nature of petitioner's membership or the degree of his moral commitment to the Party in Hungary are thus not crucial to the question before the district court, which was whether petitioner had given false testimony to the naturalization examiner.

The finding of the district court that petitioner had lied when he stated that he had never been a member

of the Communist Party in Hungary cannot be said to be clearly erroneous. Contrary to petitioner's contention (Pet. 16), the district court's finding cannot be said to rest solely upon the testimony of Dr. Kury. The testimony of Dr. Halasz, who was obviously trying to be as favorable to petitioner as he honestly could be, shows that he regarded petitioner as a Communist in the period 1950–1951 (see e.g. R. 25, 28, 30, 32, 34). Moreover, petitioner's own statements are not entirely consistent. When asked by the examiner whether he attended open party meetings, he said that in the medical school "they were not meetings" but that "the whole school came together and talked about the Russian revolution" (R. 239). In the district court proceeding he said that when the Communists took over around 1948, they conducted indoctrination meetings for groups of students and that he attended such group meetings (R. 87, 99). The district court, which had the benefit of observing both petitioner and the witnesses against him, could reasonably find that false testimony to the naturalization examiner.

Petitioner is not permanently debarred from citizenship by the finding that he testified falsely in this proceeding. As the spouse of an American citizen, he can reapply for citizenship three years after his wife's admission to citizenship and must then prove his good moral character during that three year period. Sec. 319 of the Immigration and Nationality Act, 8 U.S.C. 1430. If he gives truthful answers at that time, he can be admitted to citizenship.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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